

August 8, 2014

The Honorable Bill Nelson
Chairman
Special Committee on Aging
U.S. Senate
Washington, DC 20510

The Honorable Susan Collins
Ranking Member
Special Committee on Aging
U.S. Senate
Washington, DC 20510

Dear Chairman Nelson and Ranking Member Collins:

The National Senior Citizens Law Center (NSCLC) joins others in raising concerns about the impact on Medicare beneficiaries of an alarmingly common practice known as observation status. Observation status is depriving many older patients of their right to hospital coverage under Medicare Part A.¹ Our attorneys hear from some of the over 600,000 Medicare beneficiaries² who receive hospital inpatient services, but are improperly classified as outpatients in observation status and, as a result, are forced to absorb hospital costs that otherwise would have been paid under Medicare Part A. In our experience, families and individuals face severe financial problems as a result of this practice.

This practice is particularly damaging to lower income older adults who are already saddled with high health care costs and should be able to trust that Medicare will cover a hospital stay. Although Medicare Part A pays for "inpatient" hospital care, Medicare beneficiaries face significantly larger co-insurance obligations under Part B which pays for outpatient medical care, including observation status care. As importantly, in order to qualify for Medicare-covered skilled nursing facility (SNF) care, one must first have at least three days of "inpatient" Part A hospital care. Increasingly, however, hospitals are keeping patients for significant time periods under Part B "observation status" without formally admitting them—in some cases up to 1-2 weeks. Without a formal admission, the patient is on the hook for the cost of nursing facility care. Unfortunately, the patient often does not realize the scope of his or her financial liability until months later.

Misguided payment incentives drive hospitals to observation status to avoid audits and prosecution because the federal government seeks to limit short stays in the hospital. However, observation status is only supposed to be used to assess whether a patient should receive more treatment and only for very short periods of time.

NSCLC commends the bipartisan effort to protect consumers from the harm caused by this often arbitrary and overused practice, and supports the efforts of Ranking Member Collins and Senator Sherrod Brown in sponsoring the *Improving Access to Medicare Coverage Act of 2013* (H.R.1179/S. 569).

Sincerely,



Georgia Burke
Directing Attorney

¹ Sharp Rise in Medicare Enrollees Being Held in Hospitals for Observation Raises Concerns about Causes and Consequences, *Health Affairs*, June 2012 31: 61251-1259.

² OIG, *Hospitals' Use of Observation Stays and Short Inpatient Stays for Medicare Beneficiaries*, OEI-02-12-00040, page 15 (July 29, 2013), <http://oig.hhs.gov/oei/reports/oei-02-12-00040.pdf>.

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